STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, Patrick M. Meter and Deborah A. Servitto

SBC HEALTH MIDWEST, INC,

Petitioner/Appellee,

v

CITY OF KENTWOOD,

Respondent/Appellant.
_____/

Supreme Court Docket No. _____

Court of Appeals No. 319428

MTT Docket No. 416230
Tribunal Judge Steven H. Lasher

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RESPONDENT CITY OF KENTWOOD'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT IDENTIFYING THE ORDER APPEALED FROM AND THE RELIEF SOUGHT

This case presents the question of whether a for-profit corporation operating a for-profit college is entitled to claim a personal property tax exemption under the General Property Tax Act ("GPTA"), MCL 211.1 *et seq.* The Michigan Tax Tribunal granted summary disposition in favor of the Respondent City of Kentwood ("Respondent" or "City"), concluding that the Petitioner SBC Health Midwest, Inc.("Petitioner")—an out-of-state corporation that operated Sanford Brown, a for-profit college—could not claim an educational exemption for the subject personal property. The Tribunal reasoned that because MCL 211.7n[1] expressly requires an educational exemption claimant to be "nonprofit," the exemption is not available to for-profit corporations.

Petitioner appealed the Tribunal's decision to the Michigan Court of Appeals, which reversed the Tribunal and held that despite the "nonprofit" language in MCL 211.7n, and the fact that Petitioner would not qualify for an educational exemption under that section, Petitioner could nevertheless claim an educational exemption for the same property under MCL 211.9(1)(a)[2] because that section does not require an exemption claimant to be nonprofit. *SBC Health Midwest, Inc v City of Kentwood,* unpublished opinion per curiam of the Court of Appeals, issued March 19, 2015 (Docket No. 319428), **Exhibit A.**

The Court of Appeals decision is clearly erroneous and conflicts with another decision of the Supreme Court, specifically *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006). The *Wexford* Court—based on the language in MCL 211.7o (exempting "personal property owned and occupied by a nonprofit charitable institution") construed MCL 211.9(1)(a)

[1] As discussed *infra*, MCL 211.7n exempts, in part, certain "[r]eal estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions…."

[2] MCL 211.9(1)(a), formerly MCL 211.9(a), exempts, in part, "personal property of charitable, educational, and scientific institutions…."

(exempting "personal property of charitable…institutions") to require that the exemption claimant *under either section* be a "nonprofit institution." The Court of Appeals decision in this case clearly conflicts with *Wexford* in its treatment of MCL 211.9(1)(a), and its failure to read MCL 211.9(1)(a) together with MCL 211.7n.

As discussed *infra*, the Court of Appeals decision conflicts with other decisions of that Court and this Court, including decisions setting forth well settled rules of statutory construction. If allowed to stand, the decision will cause material injustice by extending a property tax exemption to a for-profit entity not only contrary to the plain language of MCL 211.7n, but also in contravention of the decisions of this Court and the Court of Appeals recognizing that because tax exemptions are in derogation of the principle that all shall bear a proportionate share of the tax burden, exemptions shall be strictly construed in favor of the taxing government. See e.g., *Retirement Homes of the Detroit Annual Conf of the United Meth Church, Inc v Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982); *OCLC Online Computer Lib Ctr, Inc v Battle Creek*, 224 Mich App 608, 611-612; 569 NW2d 676 (1997). For these reasons, the Application should be granted. MCR 7.302(B)(5).

Moreover, the Application should be granted because the Court of Appeals decision, even though unpublished, will have far-reaching implications with regard to property tax exemptions and tax revenues throughout the state. Undoubtedly, other for-profit entities will rely on the decision to claim educational, scientific and charitable exemptions for personal property throughout the state. Given the frequency with which property exemption cases appear before local taxing jurisdictions, the Tribunal, the Court of Appeals, and this Court, it is clear that this issue has significant public interest, invokes legal principles of major significance to the state's jurisprudence, and is nearly certain to recur. This, too, is grounds for granting this Application. MCR 7.302(B)(2), (3).

Thus, with this Application, the City respectfully requests that this Court reverse the Court of Appeals decision and affirm the Tribunal's grant of summary disposition in favor of the City.

STATEMENT OF QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN REVERSING THE MICHIGAN TAX TRIBUNAL ORDER AND HOLDING THAT A FOR-PROFIT CORPORATION OPERATING A PRIVATE, FOR-PROFIT POST-SECONDARY SCHOOL MAY CLAIM AN AD VALOREM TAX EXEMPTION FOR ITS PERSONAL PROPERTY UNDER MCL 211.9(1)(a), WHERE BOTH SECTION 7n OF THE GENERAL PROPERTY TAX ACT, BEING MCL 211.7n, AND THE MICHIGAN CONSTITUTION LIMIT PROPERTY TAX EXEMPTIONS FOR EDUCATIONAL INSTITUTIONS TO *NONPROFIT* EDUCATIONAL INSTITUTIONS AND THE MICHIGAN SUPREME COURT HAS HELD THAT OTHER INSTITUTIONS SEEKING AN EXEMPTION UNDER MCL 211.9(1)(a) MUST BE NONPROFIT?

Petitioner SBC Health Midwest, Inc. would answer "No."
Respondent City of Kentwood answers "Yes."
The Tax Tribunal would answer "Yes."
The Court of Appeals would answer "No."

STATEMENT OF FACTS

I. PETITIONER'S EXEMPTION CLAIM

Petitioner is a Delaware for-profit corporation and a subsidiary of Career Education Corporation ("CEC"), a Delaware for-profit corporation. Stipulation of Facts, **Exhibit B,** ¶¶ 3-4.[3] As of each of the relevant tax days[4], Petitioner operated Sanford-Brown College Grand Rapids ("SBC-GR") at 4020 Sparks Drive SE, the location of the subject property. SBC-GR was a private, for-profit postsecondary school. *Id.* at ¶¶ 7-8. SBC-GR began offering courses in November 2009. In December 2012, SBC-GR stopped enrolling new students (after CEC announced plans to close the campus). SBC-GR closed its facility in early 2014. *Id.* at ¶¶ 17, 25.

Petitioner requested a personal property tax exemption for its commercial personal property for tax years 2011 through 2013. The aggregate true cash value of the subject property for the three tax years at issue (2011 through 2013) was $1,757,000, which Petitioner did not dispute. *Id.* at ¶¶ 3-4. The City denied the exemption and Petitioner appealed the denial to the Michigan Tax Tribunal ("Tribunal").

II. THE TAX TRIBUNAL'S DECISION

At the Tribunal, Petitioner claimed that the property was exempt under MCL 211.9(1)(a) as the property of an educational institution. The City opposed the exemption for the reason that the exemption did not apply to for-profit colleges. The City argued (as discussed *infra*) that Petitioner's interpretation of MCL 211.9(1)(a) conflicted not only with the remainder of the statutory scheme regarding exemptions for educational institutions, most notably MCL 211.7n (which provides an

[3] The Stipulation of Facts appended to this brief does not include the attachments referenced therein; the attachments are included in the Tribunal record.

[4] The taxable status of the real property (i.e., whether the property is exempt) is determined as of tax day, which is defined as December 31 of the prior year. MCL 211.2.

exemption for real or personal property owned by a *nonprofit* educational institution), but also with the Michigan Constitution, which authorizes a tax exemption for *nonprofit* educational organizations…." The Tribunal agreed and held that Petitioner was not entitled to the exemption for the subject property.

The Tribunal explained that because MCL 211.9(1)(a) and MCL 211.7n share a common purpose (i.e., they relate to an exemption for personal property of an educational institution), they must be read together *in pari materia* to ascertain the legislative intent with respect to the exemption. 10/08/13 Final Opinion and Judgment, **Exhibit C**, p 8-9. The Tribunal analyzed the statutes at issue and concluded that MCL 211.7n is controlling and that MCL 211.7n applies only to "*nonprofit* organizations and institutions." *Id.* at p 11 (emphasis in original). The Tribunal also explained that the Michigan Constitution provides an exemption from taxation for personal property only for nonprofit educational organizations." *Id.* (emphasis in original). The Tribunal thus concluded:

> Given the above, the Tribunal finds that Petitioner's personal property is not entitled to an exemption under MCL 211.9(l)(a) and 211.7n, as Petitioner is not a *nonprofit* educational institution, as required by the controlling statute and the Michigan Constitution. The Tribunal does not find it necessary to consider the remaining arguments relating to whether Petitioner is an "educational" institution, as Petitioner's status as a for-profit entity would prohibit it from receiving the exemption regardless of whether it met the test for an educational institution. As such, the Tribunal finds that there is no genuine issue of material fact with respect to the requirement that Petitioner must be a nonprofit educational institution in order to qualify for an exemption. As Petitioner is not a nonprofit educational institution, summary disposition in favor of Respondent is appropriate under MCR 2.116(I)(2). [*Id.* at 11-12 (emphasis in original).]

Petitioner moved for reconsideration and the Tribunal denied the motion because Petitioner "failed to demonstrate a palpable error relative to the October 8, 2013 Final Opinion and Judgment that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected." 11/15/13 Order Denying Petitioner's Motion for Reconsideration, **Exhibit D.** The Tribunal concluded that Petitioner, instead, "reiterated its original arguments raised in its Motion

for Summary Disposition", and recognized that "a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." *Id.* at 3, citing MCR 2.119(F)(3).

III. THE COURT OF APPEALS DECISION

Petitioner appealed the Tribunal's decision to the Court of Appeals, which reversed the Tribunal's decision. The Court of Appeals concluded that MCL 211.9(1)(a) exempts from taxation the personal property of educational institutions without regard to whether the institution is for-profit or nonprofit. The Court of Appeals held that MCL 211.9(1)(a) is unambiguous and, therefore, the Tribunal erred in reading and applying the requirement of nonprofit status found in MCL 211.7n into MCL 211.9(1)(a).

The Court stated the following as the reasoning for its decision:

> First, MCL 211.7n exempts from taxation real estate or personal property owned and occupied by a nonprofit theater, library, educational, or scientific institution. We note that MCL 211.7n employs the phrase "owned *and* occupied" addressing the property subject to taxation, and the tax exemption claimed in the instant matter concerns a personal property exemption. One does not ordinarily envision "personal property" of the sort being claimed exempt by petitioner here as being "occupied" or subject to occupation as referenced in MCL 211.7n, lending serious doubt to whether that statute would be at all applicable to the facts at hand.
>
> Next, "the interpretive aid of the doctrine of in pari materia can only be utilized in a situation where the section of the statute under examination is itself ambiguous." *Tyler v Livonia Pub Sch*, 459 Mich 382, 392; 590 NW2d 560 (1999), citing *Voorhies v Faust*, 220 Mich 155, 157; 189 NW 1006 (1922). As indicated above, MCL 211.9(1)(a) is unambiguous, rendering use of the doctrine of in *pari materia* concerning MCL 211.7n unnecessary. Thus, even if MCL 211.7n were applicable and required an educational institution to be nonprofit in order to qualify for the tax exemption contained therein, the most that can be said is that petitioner would not qualify for an exemption under MCL 211.7n. This does not result in petitioner being deprived of a tax exemption under MCL 211.9(1)(a) if it otherwise applies. [**Exhibit A,** slip op at 3.]

The Court of Appeals remanded the case to the Tribunal to consider whether Petitioner—regardless of its for-profit status—meets the criteria for exemption under MCL 211.9(1)(a).

DISCUSSION

I. STANDARD OF REVIEW

Summary disposition may be granted under MCR 2.116(C)(10) where there is no genuine issue of material fact and the moving party proves that it is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing a motion under MCR 2.116(C)(10), the Tribunal is required to construe the pleadings and other documentary evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The Tribunal may (as it did in this case) grant summary disposition to the opposing party under MCR 2.116(I)(2) if it determines that the opposing party, rather than the moving party, is entitled to judgment. *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

When statutory interpretation is involved, this Court reviews de novo whether the Tribunal made an error of law or adopted a wrong principle. *Briggs Tax Svc, LLC v Detroit Public Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010). This Court also reviews de novo the grant or denial of a motion for summary disposition. *Id.* But, this Court "will generally defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer. *Wexford, supra*, 474 Mich at 221 (citation omitted). See also *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002) ("While statutory interpretation is a question of law that is reviewed de novo, we generally defer to the Tax Tribunal's interpretations of the statutes it administers and enforces").

II. THE TRIBUNAL CORRECTLY CONCLUDED THAT PETITIONER'S PERSONAL PROPERTY WAS NOT EXEMPT FROM TAXATION, WHERE THE GENERAL PROPERTY TAX ACT AND THE MICHIGAN CONSTITUTION PROVIDE AN EXEMPTION ONLY FOR *NONPROFIT* EDUCATIONAL INSTITUTIONS; THUS, THE COURT OF APPEALS DECISION SHOULD BE REVERSED

A. Statutory tax exemptions must be strictly construed in favor of the taxing jurisdiction.

At the outset, it is well established that tax exemption statutes are to be strictly construed in favor of the taxing unit and exemptions are not to be lightly given. *Evanston YMCA Camp v State Tax Comm'n,* 369 Mich 1, 7; 118 NW2d 818 (1962). Michigan applies this standard to exemption statutes recognizing that "[a] property tax exemption is in derogation of the principle that all property shall bear a proportionate share of the tax burden…." *Retirement Homes of Detroit, supra,* 416 Mich at 348.

Hence, as the Court of Appeals explained in *EldenBrady v City of Albion,* 294 Mich App 251, 255; 816 NW2d 449 (2011), "[t]here are certain special rules of construction that apply to the interpretation of statutory tax exemptions:

> An intention on the part of the legislature to grant an exemption from the taxing power of the State will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant." [Quotations and citations omitted.]

The taxpayer has the burden of showing entitlement to the exemption. *Power v Dep't of Treasury*, 301 Mich App 226, 233; 835 NW2d 622 (2013).[5]

The Court of Appeals—in reversing the Tribunal's decision—acknowledged that tax exemptions are to be strictly construed against the taxpayer, and in favor of the taxing authority. Yet it is apparent that the Court of Appeals decision merely paid lip service to these rules. The Court of Appeals ignored the statutory scheme and the limitations set forth in the Michigan Constitution, and extended a category of personal property tax exemptions to for-profit entities that, but for the Court of Appeals interpretation of MCL 211.9(1)(a), would not be entitled to a personal property tax exemption (and are clearly excluded from a similar real property exemption).

B. Personal property owned by a for-profit educational institution is not exempt from ad valorem taxation.

All property, real and personal, is subject to taxation unless expressly exempted. MCL 211.1. MCL 211.9(1) exempts the following personal property from ad valorem taxation:

> (a) The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt.[6]

MCL 211.9(1)(a) does not contain an explicit reference to "nonprofit" or "for-profit" status, for educational institutions. For this reason, Petitioner argues that it grants an exemption to both

[5] "[T]he beyond a reasonable doubt standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by the Legislature. However, the preponderance of the evidence standard applies when the petitioner attempts to establish that it is a member of an already exempt class." *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 493; 644 NW2d 47 (2002).

[6] The requirement that an exemption claimant be incorporated in Michigan has been found to be unconstitutional because it denies equal protection to out-of-state institutions. *OCLC Online Computer Library Center, supra*, 224 Mich App at 612.

nonprofit and for-profit educational institutions. However, as set forth below, the Tribunal correctly concluded—for several reasons—that the personal property of a for-profit educational institution is not exempt under MCL 211.9(1)(a).[7]

1. MCL 211.9(1)(a) cannot be read to grant an exemption to for-profit educational institutions because it would create a direct conflict with MCL 211.7n, which expressly provides an exemption for the personal property of a *nonprofit* educational institution; the only construction that avoids conflict is one in which MCL 211.9(1)(a) is read to apply only to nonprofit educational institutions.

The Court of Appeals finding that MCL 211.9(1)(a) applies with equal force to for-profit and nonprofit educational institutions ignores the rest of the statutory scheme regarding the exemption of property of educational institutions.

More specifically, the Court of Appeals interpretation of MCL 211.9(1)(a) creates a direct conflict with MCL 211.7n, which states:

> Real estate or personal property owned and occupied by ***nonprofit theater, library, educational, or scientific institutions*** incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act. [Emphasis added.]

[7] The Tribunal did not reach the issue of whether Petitioner meets the requirements of an "educational institution." An institution seeking an educational institution exemption must (1) fit into the general scheme of education provided by the state and supported by public taxation; and (2) make a substantial contribution to the relief of the burden of government. *UAW-Ford National Ed Dev & Training Center v Detroit*, MTT No. 247572 (July 2, 2002). Further, before a specialized school of higher education is granted an exemption, it must satisfy the test set forth in *David Walcott Kendall Mem Sch v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968), discussed *infra*.

MCL 211.9(1)(a) and MCL 211.7n share a common purpose, as both clearly address the exemption of the personal property of educational institutions. Because MCL 211.9(1)(a) and MCL 211.7n share a common purpose, the Court of Appeals clearly erred in concluding that they should not be read together.

Statutes that relate to the same subject matter are considered to be *in pari materia*. *People v Perryman*, 432 Mich 235, 240; 439 NW2d 243 (1989). "Statutes that address the same subject or share a common purpose are *in pari materia* and must be read together as a whole." *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007). The general rule of *pari materia* requires courts (and the Tribunal) to examine the context of related statutes. *Id.*

> Statutes *in pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference on to the other. [*Detroit v Michigan Bell Tel Co*, 374 Mich 543, 558; 132 NW2d 660 (1965), overruled on other grounds by *City of Taylor v Detroit Edison Co*, 475 Mich 109, 120; 715 NW2d 28 (2006).]

The objective of the *in pari materia* rule is to give effect to the legislative purpose as found in statutes addressing a particular subject. *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 416; 590 NW2d 293 (1999).

There can be no doubt that MCL 211.9(1)(a) and 211.7n address the same subject. See *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709, 712; 346 NW2d 862 (1984), in which the Court of Appeals recognized that personal property tax exemptions are provided for the same, *nonprofit* institutions in MCL 211.9(1)(a) and 211.7n:

> Petitioner argued to the Tax Tribunal that it was entitled to be exempt from personal property taxes under MCL 211.9(a), which protects ***nonprofit*** charitable, educational or scientific institutions. It should be noted that personal property tax exemptions are also provided for ***such institutions*** under MCL 211.7n and MCL 211.7o. Section 7n exempts personal property owned and occupied by a nonprofit theater, library,

> educational or scientific institution, while personal property owned and occupied by charitable institutions is exempt under section 7o. [Emphasis added.]

Despite this, the Court of Appeals in this case refused to apply the doctrine of *pari materia,* finding that MCL 211.9(1)(a) was unambiguous on its face. Had the Court considered MCL 211.7n, it would have determined the statutes conflicted and would have been required to apply the doctrine of *pari materia.* Thus, the Court clearly erred in failing to recognize that the application of *pari materia* is appropriate where a statute conflicts with another statute. See e.g., *Wayne Co Chief Executive v Mayor of City of Detroit,* 211 Mich App 243, 246-247; 535 NW2d 199 (1995), in which the Court of Appeals concluded that a statute was not ambiguous on its face, but nevertheless applied the doctrine of *pari materia* to determine if it irreconcilably conflicted with another statute. The Court concluded that "the trial court properly interpreted the statutes *in pari materia* to avoid a conflict." *Id*. at 247.

Here, the Court of Appeals ignored that "[a] statutory provision is ambiguous if it irreconcilably conflicts with another provision or when it is equally susceptible to more than one meaning." *Basic Prop Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552, 559; 808 NW2d 456 (2010). The Court of Appeals clearly erred in ignoring that where a statute irreconcilably conflicts with another or is equally susceptible to more than one meaning, judicial construction is appropriate, statutory provisions with a common purpose should be read *in pari materia*, and the construction that avoids conflict should control. *In re Indiana Michigan Power Co,* 297 Mich App 332, 344; 824 NW2d 246 (2012). See also *World Book, supra,* 459 Mich at 416-417 ("Conflicting provisions of a statute must be read together to produce an harmonious whole and to reconcile any inconsistencies whenever possible"); *People v Ellis,* 224 Mich App 752, 756; 569 NW2d 917 (1997) (when the construction of two statutes lends themselves to a construction that avoids conflict, that interpretation of the statutes is controlling).

Here, the only construction that avoids conflict is one in which MCL 211.9(1)(a) is read to apply to nonprofit educational institutions. In fact, that is exactly what *Wexford, supra*, 474 Mich at 192requires. In *Wexford*, this Court construed MCL 211.9(1)(a)—which also applies to charitable institutions—to require that an exemption claimant seeking an exemption under that section be a nonprofit institution. Importantly, the Court recognized that the charitable exemption in MCL 211.7o applied only to "[r]eal or personal property owned and occupied by a nonprofit charitable institution." The Court then concluded that in order to claim a charitable exemption under *MCL 211.9(1)(a)*—which exempts the "personal property of charitable…institutions"—the exemption claimant must be a *nonprofit institution*.

Despite the absence of the word "nonprofit" in MCL 211.9(1)(a), the *Wexford* Court concluded that

> certain factors come into play when determining whether an institution is a 'charitable institution' under MCL 211.7o **and MCL 211.9(a)**. Among them are…
>
> (1) A 'charitable institution' must be a nonprofit institution. [*Id.* at 215 (emphasis added.]

It cannot be said that the *Wexford* decision is distinguishable because a charitable institution—unlike an educational institution—*must* be nonprofit, or that notions of charity and nonprofit are inseparable. To the contrary, the *Wexford* Court recognized that a nonprofit institution is not automatically a charitable one. "By requiring an institution to show that it is both nonprofit and charitable, the Legislature has presumed that there are instances when a nonprofit institution might not be considered 'charitable.'" *Wexford, supra*, 474 Mich at 204, fn 6, citing *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 752 n 1; 298 NW2d 422 (1980) (noting that Michigan's tax exemption statutes are more narrowly drawn than the federal statute governing § 501(c)(3) corporations).

The *Wexford* Court clearly read MCL 211.7o and 211.9(1)(a) together, concluding that an exemption claimant under either section had to meet the same requirements, including the requirement that the exemption claimant be a nonprofit institution. The Court of Appeals decision in this case clearly conflicts with *Wexford* in its treatment of MCL 211.9(1)(a). Similarly, the Court of Appeals decision conflicts with *Kalamazoo Aviation History Museum, supra*, 131 Mich App at 712, in which the Court of Appeals expressly stated that MCL 211.9(1)(a) protects *nonprofit* charitable, educational or scientific institutions.

If the Court of Appeals decision is allowed to stand, the result would be a Michigan Supreme Court decision (*Wexford*) instructing taxing authorities and taxpayers that a charitable institution claiming an exemption under MCL 211.9(1)(a) must be nonprofit, and the Court of Appeals decision in this case holding that a claimant seeking an educational exemption under the same section may be operated for-profit. That is clearly inconsistent, and leads to an uncontemplated result. See e.g., *Telluride Ass'n v Ann Arbor*, 495 Mich 985; 844 NW2d 122 (2014) (Markman, J., dissenting) ("The application of legal standards by which the public sector defines which educational and charitable institutions qualify as 'educational' and 'charitable' institutions is a matter of considerable importance for Michigan's ***nonprofit sector***, and for the overall social environment of this state") (emphasis added). It also leaves unanswered whether a scientific institution—which is only exempt under MCL 211.7n if it is *nonprofit*, may claim an exemption under MCL 211.9(1)(a) if it is *for-profit.* In other words, are taxing authorities supposed to treat educational and scientific institutions differently under MCL 211.9(1)(a) than how this Court has instructed them to treat charitable institutions?

When MCL 211.9(1)(a) and 211.7n are read together (as MCL 211.7o and 211.9(1)(a) were read together in *Wexford*), it is apparent that the intent of the statutory scheme is to make

educational exemptions available to nonprofit entities that meet the other requirements of an "educational institution." "Individual words and phrases, while important, should be read in the context of the entire legislative scheme." *Michigan Prop, LLC v Meridian Twp,* 491 Mich 518, 528; 817 NW2d 548 (2012). In fact, other provisions in the GPTA support the conclusion that the Legislature intended for only nonprofit educational institutions to receive exemptions.[8]

After careful consideration, the Tribunal correctly concluded that the only construction that avoids conflict between MCL 211.9(1)(a) and MCL 211.7n is one in which MCL 211.9(1)(a) is determined to apply to nonprofit educational institutions. It is nonsensical to conclude that a for-profit educational institution that is not entitled to an exemption under MCL 211.7n as a result of its for-profit status can simply claim an exemption for the same property under MCL 211.9(1)(a). In fact, the Court of Appeals decision places a higher burden on nonprofit entities. Under the Court of Appeals decision, nonprofit educational institutions could only claim exemptions (under MCL 211.7n) if they can show that they own and occupy the subject property, while for-profit entities could claim an exemption by mere virtue of ownership (under MCL 211.9(1)(a)). Clearly, that is not the intent of a statute intended to grant an educational exemption and, therefore, immunity from the burden of taxation, to those institutions that substantially *reduces* the burden on the government. *Michigan United Conservation Clubs v Lansing Twp,* 423 Mich 661, 670; 378 NW2d 737 (1985).

The Tribunal's interpretation is based on the well settled rules of statutory interpretation and is entitled to deference by this Court. *Schultz, supra,* 252 Mich App at 529. The Court of

[8] See e.g., MCL 211.7o (exempting real or personal property owned by a nonprofit charitable institution that is occupied by a nonprofit educational institution); MCL 211.7z (exempting property occupied by a school district, community college, or other state supported educational institution, or a nonprofit educational institution, which would have been exempt from ad valorem taxation had it been occupied by its owner solely for the purposes for which it was incorporated).

Appeals decision, on the other hand, ignores basic principles of statutory interpretation and conflicts with this Court's decision in *Wexford.* Thus, the City respectfully requests that this Court reverse the Court of Appeals decision and affirm the grant of summary disposition in favor of the City.

2. The Court of Appeals decision erroneously and unnecessarily casts doubt on the applicability of MCL 211.7n to personal property, by wrongfully limiting the meaning of "occupy."

As discussed above, MCL 211.7n exempts, in part, "[r]eal estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions…with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated." The Court of Appeals—without citation to any authority—proclaimed:

> We note that MCL 211.7n employs the phrase "owned *and* occupied" addressing the property subject to taxation, and the tax exemption claimed in the instant matter concerns a personal property exemption. One does not ordinarily envision "personal property" of the sort being claimed exempt by petitioner here as being "occupied" or subject to occupation as referenced in MCL 211 .7n, lending serious doubt to whether that statute would be at all applicable to the facts at hand. [**Exhibit A,** slip op at 3.]

This conflicts with the Court of Appeals published decision in *OCLC Online Computer Library Center, supra,* 224 Mich App at 611, in which the Court of Appeals clearly recognized that:

> The following test, although couched in terms of real estate, applies equally in determining whether a party qualifies for a personal property exemption if the references to realty are treated as references to personalty:
>
> (1) The real estate must be owned and occupied by the exemption claimant…."

Thus, there can be no doubt that personal property can be "occupied." The appropriate inquiry, instead, is what does it mean to "occupy" personal property? This Court has recognized that "owned" and "occupied" have different meanings. In *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008), the Court construed "occupancy" in the context of

MCL 211.7o to mean that a nonprofit charitable institution in question must "at a minimum have a regular physical presence on the property" and "must actually occupy the property, i.e., maintain a regular physical presence there." *Id.* at 58. The petitioner in that case was a nonprofit corporation that owned single-family homes. The petitioner leased the homes to low income and disabled individuals. *Id.* at 46-47. The Court found that a lack of a regular physical presence meant that the petitioner did not "occupy" the homes as contemplated by MCL 211.7o(1). *Id.* at 62-63.

It does not appear that the Court of Appeals relied on *Liberty Hill* or any other cases in summarily dismissing MCL 211.7n in this case, as the Court does not cite any authority. Had the Court of Appeals considered *Liberty Hill,* it is possible on first glance that the definition of occupancy *in that case* (a "regular physical presence") could cause one to question whether MCL 211.7n applies to all categories of personal property. However, upon examination of the *Liberty Hill* decision, it is apparent that the Supreme Court did not restrict the meaning of "occupy" to regular physical presence for all types of real and personal property.

Instead, the Court recognized—citing *Webster's Universal Dictionary* (1997 ed)—that "occupy" has several different meanings:

> —v.t. 1. to have, hold, or take as a separate space; possess, reside in or on, or claim: The orchard occupies half the farm. 2. to be a resident or tenant of; dwell in. 3. to fill up, employ, or engage: to occupy time reading. 4. to engage or employ the mind, energy, or attention of: We occupied the children with a game. 5. to take possession and control of (a place), as by military invasion.—v.i. 6. to take or hold possession. [*Id.* at 57.]

The Court concluded that the second meaning was the one the Legislature intended. The Court explained that the third, fourth, and fifth meanings in the definition were "clearly not relevant here." *Id.* The Court rejected the first definition of "occupy" finding that it was

synonymous with ownership and concluding that the Legislature intended different meanings for the words "owned" and "occupied." *Id.* The Court then concluded that

> the Legislature must have intended the term "occupy" to mean the other aspect of the dictionary definition: to "reside in or on" or "to be a resident or tenant of; dwell in." ***This aspect of the definition especially makes sense when viewed in its specific context***; it is "real or personal property" that must be "occupied." "Reside" means "1. to dwell permanently or for a considerable time; live. 2. (of things, qualities, etc.) to be present habitually; be inherent ([usually followed] by in)." Webster's Universal College Dictionary (1997). Thus, aided by this dictionary definition, we conclude that to occupy property under MCL 211.7o(1), the charitable institution must at a minimum have a regular physical presence on the property. [*Id.* at 57-58 (emphasis added).]

The *Liberty Hill* Court concluded that the second definition made sense in the specific context in that case—where the property at issue consisted of single family homes.

However, it is obvious that not all types of property—especially personal property—are capable of being resided or dwelled in. In those situations, it is reasonable to apply a different definition of "occupy." In fact, the *Liberty Hill* Court recognized that "[a] word that is defined in various ways is given meaning by its context or setting." *Liberty Hill, supra,* 480 Mich at 58, fn 14, citing *Koontz v Ameritech Svcs, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002).

Thus, in a case like this, it is not sufficient to "serious[ly] doubt" whether a statute applies simply because "[o]ne does not ordinarily envision [the property] as being 'occupied' or subject to occupation as referenced in MCL 211.7n." **Exhibit A,** slip op at 3. MCL 211.7n does not exclude any types or categories of personal property, and it is error to read a limitation or exception into the statute. See e.g., *People v Morales,* 240 Mich App 571, 576; 618 NW2d 10 (2000) (declining to read an exception into a statute).[9]

[9] A previous version of MCL 211.7 exempted "[s]uch real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions…." *American Concrete Institute v Mich State Tax Comm'n*, 12 Mich App 595, 599; 163 NW2d 508 (1968). At the time, MCL 211.9 exempted the personal property of benevolent, charitable, educational and scientific

The *Liberty Hill* Court failed to address the sixth definition of "occupy": to take or hold possession. It was not necessary for the Court to explore that definition because it had already found a definition that made sense in the context of that case (i.e., in the context of single family homes). However, as stated above, that definition may not apply in all cases. The sixth definition of "occupy" set forth in *Liberty Hill* is consistent with *Black's Law Dictionary* (10th ed), which defines "occupy," in part, as "to take possession of" or "to use." It is also consistent with *The Dictionary of Real Estate Appraisal*, The Appraisal Institute (3rd ed), which defines "occupancy" as "[t]he state of being in possession," and the *Glossary for Property Appraisal and Assessment*, International Association of Assessing Officers, which defines "occupancy" as "[t]he act of taking or holding possession of property." **Exhibit E.**

And the *Liberty Hill* Court recognized that "[u]se of property is just one part of occupying it. The two terms are not mutually exclusive; 'use' is merely narrower than 'occupy.'" *Liberty Hill, supra,* 480 Mich at 61. Thus, with regard to certain types of personal property—when viewed in context—"occupy" may have a different meaning, such as regular use or possession. Because *Liberty Hill* did not involve personal property, the Court did not reach this issue. But, the dissent recognized that the language "owned and occupied"

> applies broadly to "real or personal" property, not simply residential property. Not all property that is eligible for exemption is susceptible to being resided in. For example, if a nonprofit charitable institution owned land that contained a swimming pool, it would be inapt to state that the institution occupied the swimming pool in that it resided in the pool. But it would be entirely appropriate to state that the institution occupied the swimming pool in that it operated the pool and, further, that it operated the pool in fulfillment of its charitable purpose. Thus, the term "occupied" must be construed so that it applies to the broad range of property that could be exempt under MCL 211.7o(1). [*Id.* at 70-71 (Cavanagh, J. dissenting).]

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institutions. The Legislature subsequently amended MCL 211.7 to expressly include "personal property." Despite this, the Court of Appeals in this case essentially read the phrase "personal property" out of the statute.

For the Court of Appeals in this case to dismiss MCL 211.7n without any analysis of the meaning of "occupy" ignores its own earlier decision in *City of Port Huron v State Tax Comm'n,* unpublished opinion per curiam of the Court of Appeals, issued March 20, 2012 (Docket Nos. 301058, 301062), **Exhibit F,** slip op at 4, in which it concluded that not all definitions of "occupy" require physical "occupation." The Court of Appeals in that case said—contrary to what it found in the instant case:

> In MCL 207.5(4)(b), the phrase "owned, used, and occupied" modifies "tangible property, real and personal." Applying the literal meaning of the conjunctive to the modified phrase would lead to the conclusion that, in order to have a situs in this state, tangible real property must be owned and used and occupied, and tangible personal property must be owned and used and occupied. It might be argued, as respondent does, that this result is dubious because personal property can rarely be "occupied." But as the Court discussed in *Liberty Hill*, 480 Mich. at 57–58, ***"occupy" has multiple meanings and the appropriate one must be selected in light of the type of property involved and not all definitions require physical "occupation."*** [*Id.* (emphasis added).]

In fact, the Court of Appeals in *Mich Co-Tenancy Laboratory/Trinity Health v Pittsfield Charter Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 14, 2013 (Docket No. 310376), **Exhibit G,** slip op at 7, looked at the predominant use of the personal property (laboratory equipment) in that case.

Similar to how the Court of Appeals has (in other cases) interpreted "occupy" with regard to personal property, the Tribunal has also interpreted "occupy" to mean frequent use in cases involving personal property. See e.g.,; *Healthlink Transp Servs, Inc v City of Taylor*, 15 MTT 129, 135-36 (Docket No. 275821), issued July 1, 2003, **Exhibit H** (construing "occupied" as frequent use of the subject personal property, and finding that petitioner met the occupancy requirement because "the subject personal property was physically used to 'operate emergency and non-emergency medical and transport services'"); see also *Dominion Broadcasting, Inc v*

Fairfield Twp, 11 MTT 26 (Docket No. 268756), issued March 13, 2001, **Exhibit I**, where the Tribunal stated:

> Occupancy was defined in *Green v Ingersoll*, 89 Mich App 228, 228; 280 NW2d 496 (1979) as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in." Black's Law Dictionary (4th ed 1968) p. 1231. The Tribunal also finds "occupant" defined in Black's Law Dictionary (4th ed 1968) p. 1230 as: "person having possessory rights, who can control what goes on premises." *United States v Fox CCANY*, 60 F2d 685, 688.

Given the multiple definitions of "occupy", the Court of Appeals disregard of MCL 211.7n was unfounded. The statute should have been construed and given effect in the context of the type of property at issue and, more importantly, the Court of Appeals should have recognized that it does apply to personal property of educational institutions, and is inconsistent with MCL 211.9(1)(a), therefore creating a conflict and resulting ambiguity necessitating application of the *pari materia* doctrine as discussed above.

3. The Court of Appeals interpretation of MCL 211.9(1)(a) is in direct conflict with the Michigan Constitution

The Tribunal's decision in this case—unlike the interpretation urged by Petitioner and adopted by the Court of Appeals—was also consistent with the Michigan Constitution. Article 9, §4 of the 1963 Michigan Constitution clearly states that "[p]roperty owned and occupied by ***non-profit religious or educational organizations*** and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes" (emphasis added).

It is axiomatic that in the event of a conflict the requirements of the Constitution prevail over a statute:

> [I]t is "a fundamental axiom of American law, rooted in our history as a people and requiring no citations to authority, that the requirements of the Constitution prevail over a statute in the event of a conflict." See also *Marbury v Madison*, 5 US (1 Cranch) 137, 177, 2 L Ed 60 (1803) ("an act of the legislature, repugnant to the constitution, is void"). [*People v Meconi*, 277 Mich App 651, 658-659; 746 NW2d 881 (2008) (Sawyer, J., concurring).]

Thus, "[w]hen a statute is susceptible to two constructions, one consistent with the constitution and the other inconsistent, the one consistent with the constitution is preferred as that presumptively intended by the Legislature." *People v Gilliam*, 108 Mich App 695, 700; 310 NW2d 843 (1981), citing *People v Dubina*, 304 Mich 363, 369; 8 NW2d 99 (1943).

The Tribunal has correctly noted—not *only* in this case—that based on the language of Article 9, §4 of the 1963 Constitution, "the Tribunal cannot help but find that the will of the People was not to grant a property tax exemption to a for-profit organization." *Charter Dev Co, LLC v Twp of York*, MTT Docket No. 304877 (April 8, 2011), **Exhibit J**.[10] In fact, the Tribunal recently reaffirmed its interpretation of the statutes at issue in this case, holding once again that a for-profit educational institution is not entitled to an exemption under MCL 211.9(1)(a). In the case of *Grand Rapids Ed Center, Inc v Plainfield Twp*, MTT Docket No. 440053 (January 7, 2014), **Exhibit L,** the petitioner operated a for-profit, post-secondary school. The Tribunal held that the petitioner was not entitled to an exemption under MCL 211.9(1)(a) for its personal property, explaining that given the operation of MCL 211.7n, the educational exemption is available to *nonprofit* organizations and institutions, as further dictated by the constitution. *Id.* at 4-5.

It is quite revealing that the only case that Petitioner could point to involving a for-profit entity was *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948), citing *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920). It cannot be overlooked that *Webb*

[10] It is also noteworthy that based on a survey conducted by the City Assessor's Office, which was presented below, the majority of taxing jurisdictions in which personal property of for-profit postsecondary education institutions was located concurred with the City and Tribunal's conclusion that the property was not exempt. This includes but is not limited to personal property owned by University of Phoenix, the Academy of Court Reporting, the Art Institute of Michigan, DeVry University, Everest Institute, ITT Technical Institute, Michigan Institute of Aviation and Technology, Ross Medical Education Center, and Dorsey Schools. **Exhibit K.** The Court of Appeals decision and Petitioner's position below do not reflect the general understanding of the law in this state.

was decided decades before the adoption of our current Constitution which clearly authorizes an exemption only for *nonprofit* educational organizations. Further, the school in *Webb* was a general educational institution, not a business college or specialized school, and *Webb* was decided over 50 years before "nonprofit" was added to MCL 211.7n. Thus, the *Webb* case is certainly not determinative of the issue presented here.

The Tribunal's decision was consistent with the Constitution and was erroneously reversed by the Court of Appeals. Despite the Court of Appeals recognition that "the Legislature may ***not*** override a power provided in the Constitution," *Oshtemo Charter Twp v Kalamazoo Co Rd Comm'n*, 302 Mich App 574, 577; 841 NW2d 135 (2013) (emphasis added), the Court of Appeals in this case failed to even acknowledge that the Constitution limits exemptions to *nonprofit* educational institutions. Because the Court of Appeals decision clearly conflicts with the Constitution, the decision should be reversed. See MCL 211.1 ("all property, real and personal…not expressly exempted, shall be subject to taxation").

III. EVEN ASSUMING THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE LEGISLATURE INTENDED TO PROVIDE AN EXEMPTION TO FOR-PROFIT EDUCATIONAL INSTITUTIONS, PETITIONER DID NOT MET ITS BURDEN OF PROVING THAT IT WAS AN "EDUCATIONAL INSTITUTION" ENTITLED TO AN EXEMPTION AND, THEREFORE, A REMAND IS UNNECESSARY AND REVERSAL OF THE COURT OF APPEALS DECISION IS STILL WARRANTED.

The Court of Appeals remanded the case to the Tribunal to determine whether Petitioner meets the requirements. See *Engineering Soc of Detroit v Detroit*, 308 Mich 539, 542; 14 NW2d 79 (1944) ("The burden of establishing the fact [that a given institution is a scientific or educational institution within the meaning of the tax exemption statutes] rests on plaintiffs....").

An institution seeking an educational institution exemption must (1) fit into the general scheme of education provided by the state and supported by public taxation; and (2) make a

substantial contribution to the relief of the burden of government. The test has been broadened over the years and, now, specialized schools and training programs may qualify for the exemption. However, before a specialized school of higher education is granted an exemption, it must satisfy the test set forth in *David Walcott Kendall Mem Sch, supra,* 11 Mich App at 231:

> If the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study? The probability of their attendance elsewhere on the college or university level would have to be derived Inter alia from the requirements for admission to the school seeking exemption, the qualifications of the student, the major field of study undertaken by the student, the time necessary to complete the prescribed course of study, and the comparative quality and quantity of the courses offered by the school to the same programs at the State colleges and universities. If such an institution is educating students qualified and willing to attend a State college or university, majoring in the same field of study, then it can be said that this institution is assuming a portion of the burden of educating the student which otherwise falls on tax-supported schools.

In the *Kendall* case, the Court found that the non-profit Kendall School of Design fit into the scheme of education of the State and "[w]ere it not for the existence of the plaintiff institution, it is clear that the burden imposed on the art and design departments of our State supported colleges and universities would be appreciably increased." *Id.* at 243.

Unlike Kendall's 325-person student body, the evidence presented below established that with regard to SBC-GR, "[s]ixteen (16) of twenty-five (25) students obtain positions in their field of study after graduation." **Exhibit B,** ¶ 24. Petitioner presented no evidence to support the conclusion that if SBC-GR did not exist, the burden imposed on our state-supported colleges and universities would be "appreciably increased." Nor did Petitioner present any evidence that the students attending SBC-GR were "qualified and willing to attend a State college or university." *Kendall, supra.*

Further, while Petitioner alleged below that SBC-GR's offerings were the same as some state sponsored, nonprofit schools and that it has "a comparative quality and quantity of courses offered by state colleges and universities", at least one of the schools to which Petitioner compared SBC-GR stated that it did not accept transfer credits from SBC-GR. See email from Jackson Community College attached as **Exhibit M.** This demonstrates that Jackson Community College, to which Petitioner claims to be comparable, does not consider SBC-GR to be of a comparative quality. It also calls into doubt Petitioner's allegation below that the schools offer "nearly identical degrees." If that were the case, Jackson Community College would likely accept transfer credits from SBC-GR.

In support of its exemption request, Petitioner emphasized below that it had articulation agreements[11] with two schools—Colorado Technical University ("CTU Online") and Briarcliffe College. However, Petitioner admitted that CTU Online and Briarcliffe College were subsidiaries of CEC, SBC-GR's parent corporation. **Exhibit B,** ¶¶ 9-12. Thus, these self-serving agreements are not entitled to little, if any, weight. Thus, Petitioner failed to meet its burden of proof below and did not establish that the school at issue is the type of tax-exempt educational institution contemplated by our Legislature.

Although the Tribunal and Court of Appeals did not address this issue, the parties already presented their Stipulation of Facts below, briefed the issue in the Tribunal, and presented oral argument on this very issue. And "where…the legal theory rests upon undisputed facts..., the parties have had the opportunity to fully brief the legal issue involved…, and the reviewing court can reach a reasonable conclusion upon evidence contained in the record, the reviewing court may decide the issue in the interest of justice and judicial efficiency." *People v LeBlanc*, 399 Mich 31, 49 fn 12; 248

[11] Articulation agreements are written agreements between two campuses that define how courses taken at one school can be used to satisfy academic requirements in a program at another school. SOF, ¶ 10.

NW2d 199 (1976). The record is complete and Petitioner should not be permitted to bolster the record on remand having now had the benefit of the City's objections in this matter.

Thus, even assuming *arguendo* that for-profit colleges may seek ad valorem exemptions under MCL 211.7n or MCL 211.9(1)(a)—an argument that the Tribunal has expressly rejected, and with which the City strongly disagrees—Petitioner failed to meet its burden of proving that it was an "educational institution" for purposes of such an exemption. Accordingly, the Court of Appeals decision should be reversed and the Tribunal's decision affirmed. See *McNair v State*, 305 Mich 181, 188; 9 NW2d 52 (1943) ("where the trial judge reaches the right conclusion in deciding a case, we do not disturb the result attained even though other reasons should have been assigned").

CONCLUSION AND RELIEF REQUESTED

For all of the reasons set forth above, Respondent City of Kentwood respectfully requests that this Court issue an order reversing the Court of Appeals decision and affirming the Tribunal's decision granting summary disposition in favor of the City under MCR 2.116(I)(2).

Respectfully submitted,
BLOOM SLUGGETT MORGAN, PC

Dated: April 30, 2015

By /s/ Crystal L. Morgan

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